

Service Date: September 10, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF the Second)	UTILITY DIVISION
Application of U S WEST)	
Communications, Inc. for Approval)	DOCKET NO. N98.8.186
of a Residential Win-Back Program Tariff)	ORDER NO. 6098

Final Order

Background

On December 12, 1997 U S West filed Tariff Transmittal 97-43, Exchange and Network Services Tariff pages, Section 5, "to introduce a Win Back strategy for residence customers who have left U S West and now have service from another local service provider." Following objections to the filing from AT&T and Sprint, and submission of briefs by U S West and AT&T, the Commission rejected U S West's filing as follows:

Commission Decision

The Commission does not approve U S West's Win Back tariff, without prejudice to either 1) a refiling of the tariff accompanied by more substantial legal and policy argument; or 2) a refiling that modifies the proposed tariff to take into account the challenges raised by AT&T and Sprint. As filed Win Back appears to violate . 69-3-305(5)(a), MCA, because it is not offered "for a limited period of time." If U S West believes that this section does not apply to Win Back it should affirmatively make that argument if it refiles. Similarly, . 69-3-810(4), MCA, appears in conflict with the Win Back filing, but if U S West thinks otherwise it should so argue. Also, the Win Back filing ignores federal provisions that appear applicable. It may be that these provisions do not prevent the Commission from approving Win Back as filed, or with certain modifications, but if that is so U S West needs to clearly explain it and make the arguments for Commission approval.

Part of the difficulty with the Win Back filing is that it was made without acknowledgment of the apparent applicability of certain federal and state provisions. The arguments of AT&T and Sprint do not necessarily persuade the Commission that Win Back cannot be approved as filed; but, combined with U S West's tentative and in places confusing response, they convince the Commission that Win Back should not be approved on this record. The Win Back filing raises complex legal and public policy issues which have not been satisfactorily dealt with by U S West. If it refiles, U S West should address those issues directly.

Order No. 6008, Docket No. D97.12.243, pp.3-4.

On August 11, 1998 U S West filed another "Residential WinBack" tariff as Tariff Transmittal 98-36. In its cover letter U S West described Tariff Transmittal 98-36 as "a refiling that modifies the original tariff filing taking into account the legal challenges raised by AT&T: (1) A time limit has been added to the tariff offering to comply with 69-3-305(5)(a), MCA; (2) a 30-day withdrawal period has been added to comply with 69-3-810(4)." Tariff Transmittal 98-36 was noticed on Commission Utility Agenda No. 98-8-17 for the August 17, 1998 business meeting. No objection to the filing has been received.

Commission Decision and Discussion

Tariff Transmittal 98-36 is not a complete response to Order No. 6068, and therefore is rejected without prejudice. U S West did change its Win Back filing to make it consistent with 69-3-810(4), MCA, and responded to questions about the application of 69-3-305(5)(a), MCA, to its original Win Back filing by including a 12 month effective period for the Win Back program. However, U S West again neglected to discuss "federal provisions that appear applicable." Order No. 6068, p.4. Specifically, 47 CFR 51.613 appears applicable to Win Back because it prohibits restrictions on resale of a telecommunications service which is offered for more than 90 days unless it can be "prove[d] to the state commission that the restriction is reasonable and nondiscriminatory." 47 CFR 51.613(b). By its terms Win Back is not available for resale and it would be effective for 12 months.

Conclusions of Law

1. U S West is a public utility subject to the regulatory jurisdiction of the Montana Public Service Commission. 69-3-101(f), MCA.
2. U S West's proposed Win Back tariff is subject to the approval of the Montana Public Service Commission. 69-3-807(1), MCA.
3. Based on the record, U S West has not demonstrated that its proposed Win Back tariff complies with federal and state law.

Order

U S West's Tariff Transmittal 98-36, Exchange and Network Service Tariff, Section 5.2.11, Win Back Program, is not approved.

DONE AND DATED this 1st day of September, 1998, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman, dissenting

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner, dissenting
Dissent attached

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.